

# STATE OF TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE REAL ESTATE APPRAISER COMMISSION

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## May 12, 2008 Room 160, Davy Crockett Tower

The Tennessee Real Estate Appraiser Commission met May 12, 2008, at 9:00 a.m. in Nashville, Tennessee, at the Davy Crockett Tower in Room 160. Chairman, William R. Flowers, Jr., called the meeting to order and the following business was transacted.

#### COMMISSION MEMBERS PRESENT

William R. Flowers, Jr. Marc Headden Kenneth Woodford James E. Wade, Jr. Dr. Edward A. Baryla John Bullington

## STAFF MEMBERS PRESENT

Nikole Avers, Administrative Director Jesse D. Joseph, Staff Attorney

## ADOPT AGENDA

The Commission voted to adopt the agenda. Mr. Headden made the motion to accept the agenda and it was seconded by Mr. Wade. The motion carried unopposed.

## **MINUTES**

The April 2008 minutes were reviewed. Mr. Woodford made the motion to accept the minutes as written. It was seconded by Mr. Headden. The motion carried unopposed.

## **GENERAL BUSINESS**

Applicant Conference – PSI Response Letter

On December 29, 2007 there was an altercation at the PSI testing center in Nashville between Sydney Hedrick and the exam proctor. Mr. Hedrick was removed from the approved candidate for the exam list as a result. Mr. Hedrick was asked by administrative staff to attend the March meeting to address this matter with the Commission members. It was determined during the

## **COMMISSION MEMBERS ABSENT**

Jason West Herbert Phillips Najanna Coleman March meeting that more information was needed from PSI, therefore a response letter was requested by staff prior to setting up any meeting for PSI representatives to attend. PSI submitted a response letter which was read into the record during the April meeting. A letter was submitted to staff prior to the May meeting from PSI stating they will allow Mr. Hedrick to take the exam when he applies. This was presented to the Commission and the matter was considered closed.

Fannie Mae/Freddie Mac/Cuomo Agreement – Alabama, "Letter of No Confidence" At the request of Commissioner Bullington, staff placed copies of the agreement that has been made between Fannie Mae, Freddie Mac (secondary market participants) and New York Attorney General, Andrew M. Cuomo, which is titled the Home Value Protection Program and Cooperation Agreement and the "Home Valuation Code of Conduct" which is part of that agreement. Ms. Avers also included a "Letter of No Confidence" from Alabama in response to this agreement. Mr. Bullington urged the Commission members to consider the content of this agreement very seriously as it appears that the appraiser has taken the brunt of this action. He stated that the attorney and the lenders (Fannie Mae and Freddie Mac) have attempted to control the actions of appraisers by coalition of these parties and it may have unforeseen consequences. Mr. Headden stated he is in agreement with the concerns brought out in the Alabama "Letter of No Confidence" and recommended that the Tennessee Commission issue a similar letter. Ms. Avers stated that although she believes the concerns are valid, it may not be advisable for the Commission, which is appointed to protect the public, to issue a letter against a proposed consumer protection agreement. Mr. Headden recommended that the Commission members respond to this matter individually as appraisers rather than as a Commission as a whole.

## **Experience Interviews**

**Michelle Jeffreys** made application as an out of state applicant to become a licensed appraiser. Mr. Flowers was the reviewer and stated her appraisal reports were satisfactory and he recommended approval. Mr. Woodford made the motion to accept the recommendation and Mr. Headden seconded the motion. The motion carried unopposed.

**Mamie P. Johnson** made application to upgrade from a registered trainee to certified residential appraiser. Mr. Woodford was the reviewer and he stated the reports were compliant to USPAP Standards and recommended approval. Mr. Bullington made the motion to accept the recommendation and Mr. Wade seconded the motion. The motion carried unopposed.

**Paul D. Hayes** made application to upgrade from a registered trainee to become a licensed appraiser. Mr. Headden was the reviewer and stated the reports were USPAP compliant and only contained some minor math problems which were discussed with the applicant. He recommended approval of the request for experience credit. Mr. Wade made the motion to accept the recommendation and Mr. Woodford seconded the motion. The motion carried unopposed.

## **Education Committee Report**

Dr. Baryla reviewed the education submitted for approval and recommended approval of the "Business Practices and Ethics" course of the Appraisal Institute. He recommended the course "On-line Residential Report Writing and Case Studies" only be granted 15 hours of continuing education (not 16 hours). He recommended approval courses submitted by ASFMRA and Dennis Badger & Associates. He recommended that the course "Communications in Real Estate Acquisitions – Course 201" only be granted 12 hours of continuing education credit, not 24 as

requested, because as per 1255-2-.08 (b) (6) i and ii twelve hours of the content appear to be personal development type topics. He stated he found the other 12 hours to be relevant to dispute resolution which is an acceptable course topic. He recommended approval of the three courses submitted by McKissock, LP as requested. Lastly, he recommended approval for the individual course approval requested by Mr. Heath Riley of a USPAP update course taken at Wilson Education Group. Mr. Headden made the motion to accept Dr. Baryla's recommendation. Mr. Bullington seconded that motion. The motion carried unopposed.

## EDUCATION COMMITTEE REPORT May 12, 2008

Course Name	Course Number	Course Name	Instructors	Hrs.	Туре
Appraisal Institute	1197	Business Practices & Ethics	Stephanie Coleman	7	CE
Appraisal Institute	1198	On-line Residential Report Writing & Case Studies	Sandra Adomatis	15	On-line CE
ASFMRA	1194	Requirements of UASFLA-The Yellow Book	John Widdoss	22	CE
ASFMRA	1195	General Market Analysis and Highest & Best Use (A-290)	Douglas Hodge	30	Both
Dennis Badger & Associates	1196	Sales Comparison Fundamentals	Tom Veit/Dennis Badger	7	CE
International Right of Way Chapter 32	1200 (This course was approved in 1997 and expired in 2003)	Communications in Real Estate Acquisition- Course 201		12	CE
McKissock, LP	1191	On-line Residential Report Writing	Kenneth Guilfoyle	7	CE
McKissock, LP	1193	On-line 2008- 2009 National USPAP Update Equivalent	Alan Simmons	7	CE
McKissock, LP	1199	On-line REO and Foreclosure	Andrew Leirer	5	On-line CE

		Properties					
Individual Course Approval							
Name	License #	Provider	Name	Hrs	Туре	_	
Heath Riley	2261	Wilson Education Group	USPAP Update	7	CE		

## **LEGAL REPORT**

Richard J. DeLuca (approved 4/08) - signed Consent Order of Permanent Voluntary Surrender of his certification as a certified residential real estate appraiser effective July 31, 2008, and agreed that he violated Tenn. Code Ann. §§ 62-39-308 & 62-39-329, and Rules 1255-5-.01(2) & (7) due to his prior revocations in the states of Georgia and Florida in 2003 and 2004 respectively, and due to his preparation of 12 appraisals in Tennessee between 2004 and 2007, where he had, amongst other things, overvalued subject properties, failed to properly report distances between comparables to subject properties, failed to use comparables of similar style and quality to subject properties, failed to make proper adjustments for comparables which had superior characteristics, failed to analyze prior sales of subject properties and of comparables in writing in his reports, and failed to report the intended use of his appraisal reports. Respondent is prohibited from re-applying for licensure or certification with the Commission pursuant to this order.

Owen Reese and Pamela Reese (approved 1/08) – Both respondents signed a Consent Order agreeing that they violated the following provisions of USPAP:

- (a) Ethics Rule, Conduct Section, by communicating assignment results in a misleading fashion by allowing Pamela Reese, a registered trainee with no license, to sign appraisal reports and other documents over an extended period of time as "Licensed trainee" or "Lt", or otherwise in a fashion which gives the impression that she is a licensed or certified real estate appraiser;
- (b) Standards Rule 1-1(a)(b)&(c), by failing to correctly employ recognized methods and techniques to produce credible appraisals and committing substantial errors of omission and commission that affected the credibility of the appraisals;
- (c) Standards Rule 1-4(a)(b)&(c), by failing to analyze comparable sales data, cost approach data, and income approach data necessary to develop a credible value conclusion;
- (d) Standards Rule 2-1(a)&(b), by failing to clearly and accurately set forth the appraisals in a manner that will not be misleading and by failing to include sufficient information in the appraisals to enable the intended users of the appraisals to understand them properly;
- (e) Standards Rule 1-5(a), by failing to analyze the current contracts for sale of subject properties and the sales histories on properties that had been subject to foreclosure sale within 3 months of the effective age of the appraisal reports;
- (f) Standards Rule 2-2(b),(i)(iii)(v)&(viii), by failing to identify the client and intended users, by failing to summarize the real estate involved, including the physical and

- economic property characteristics relevant to the assignments, by failing to identify exposure time as it applied to the market definition used; and by failing to identify the information analyzed, the appraisal methods and techniques used and employed, and the reasoning that supports the analysis, opinions and conclusions included in said reports; and
- (g) Competency Rule, by failing to have the experience and knowledge to complete certain assignments competently prior to accepting said assignments.

Respondent Owen Reese has paid a \$ 1,500 civil penalty and Respondent Pamela Reese has paid a \$ 1,000 civil penalty immediately upon execution of this consent order. As to further education to assist them in avoiding violations in the future:

(a) Both Respondents are required to deliver to the Commission Administrative Director documentary evidence by December 31, 2008 of their completion of the following courses with successful completion of the course examinations: (1. a thirty (30) hour Sales Comparison and Cost Approach course; (2. a forty-five (45) hour course in Report Writing; (3. An Income Approach course which must be at least fifteen (15) hours; and (4. A seven (7) hour Uniform Standards of Professional Appraisal Practice course.

The respondents also admitted their violations of Tenn. Code Ann. §§ 62-39-324, 62-39-326(5) and 62-39-329, and Rules 1255-1-.12(9)(10)(c)1. & 3. in these files which involved their preparation of six appraisals between 2006 and 2007.

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## 1. L08-APP-RBS-2008006701

A Consent Order went into effect in July of last year requiring the Respondent to take and complete, within 90 days after the effective date of the order, a 7 hour Marshall and Swift cost approach course, and a Supporting Adjustments in the Sales Comparison course. The prior complaint file was closed in August of last year after the order was signed. Respondent alleged that former Assistant General Counsel Bethany Heuer left him a voice mail message last October or November giving him approval to take the "Basic Valuation Methods" course as a substitute. Fellow Assistant General Counsel Patrick Merkel of our office sent correspondence to Respondent in early January of this year requesting evidence that Respondent had taken the specific courses required by the order, since there was no evidence in the prior file that Ms. Heuer had given Respondent such approval to take an unrelated course. The instant complaint file bearing upon whether Respondent had recklessly or intentionally failed to comply with the Commission's requirements as set forth in the consent order was opened in early April of this year. Ms. Heuer indicated to counsel for the Commission that she returned a phone call to Respondent late last fall, but she has no recollection of what phone message she left, and she left no documentation in the older file that Respondent had been given approval to take a different course. She could not unequivocally state, however, that it would be impossible for her to have left Respondent a message to the effect that he could take a different course. On May 1, 2008, counsel for the Commission sent a certified letter to Respondent requesting that he deliver evidence of having completed the Supporting Adjustments in the Sales Comparison approach course by the end of business, May 8, 2008, or a recommendation would be made for the commencement of a formal

proceeding (Respondent had already sent us evidence of his completion of a Marshall and Swift course). Respondent faxed, e-mailed and delivered by fed ex the requisite evidence by 12 noon on May 8, 2008.

Before current counsel became involved in requesting that Respondent submit evidence of having completed the correct courses, the Commission's Administrative Director had requested that he comply with the prior order several times.

**Reviewer:** Mr. Headden on previous complaint; none needed for this complaint.

## Prior Complaint / Disciplinary History:

200003264 (Final Order \$10,750, educational courses, downgraded to LI)

200004623 (Same as above, administrative error)

200006595 (Final Order \$10,750, educational courses, downgraded to LI)

200100966 (combined with previous)

200100972 (Consent Order)

200101487 (Closed)

200104342 (Closed)

200207456 (Dismissed)

200207645 (Dismissed)

200418534 (Closed)

200500418 (Dismissed)

200500788 (combined with Final Order previously noted)

200600153 (Dismissed)

200600367 (Closed)

200705584 (Closed with a consent order including a 7 hour cost approach course and a 7 hour supporting adjustments in the sales comparison approach course)

200708188 (Open)

Recommendation and reasoning: Staff and counsel to the Commission recommend that the Commission authorize the issuance of a letter of warning to the Respondent for being dilatory in complying with the requirements of the July, 2007 consent order. It is possible that this matter could be viewed as requiring more serious discipline, but it is unclear what the proof would show at hearing regarding Ms. Heuer's phone call and message left for the Respondent last fall. Respondent did finally comply, and there is another open complaint file in which formal proceedings will be filed soon after the receipt of the Schedule 3 review.

**Vote:** Mr. Bullington asked if this Respondent shouldn't have a consequence for the failure to comply. Mr. Headden recommended that this matter be approved for formal hearing along with another open complaint against this Respondent. Mr. Bullington made a motion to accept that recommendation. Mr. Wade seconded that motion. The motion carried unopposed.

#### 2. L08-APP-RBS-2008006041 The reviewer was Mr. Flowers.

This complaint was filed by a consumer, also a real estate agent, which alleged that the Respondent over-valued a condominium unit she was buying at the time of the appraisal. She alleged the comparables used were not similar in style, age, or square footage. She further

alleged the porch area should not have been included in the GLA because the heating/cooling is inadequate to efficiently cover this area. The complainant submitted public records and MLS data for sales in the condominium development to support her allegation of over-valuation and heating/cooling reports as well.

The Respondent stated in his response letter that the gross living area data was developed by physical inspection of the property and on-site measurements. The Respondent included both the hand-drawn sketch and electronic sketch made of the subject dwelling. He stated that based on his experience the 10' x 15' sun room should be included in the GLA. He stated this room has finished walls, ceiling, a carpeted floor, insulated windows, electrical service, and a thru-the wall unit providing supplemental air or heat to the room. He stated the adjustment made in the sales comparison approach of \$20 per square foot for the variance in size allows for a \$3,000 contribution of the sun room area. He stated if he had not included this square footage in the gross living area, he would have included as a separate line item adjustment for the "porch" as none of the comparables had a similar finished/heated sun room/porch. He stated the subject was not a condominium, but is an attached unit in a PUD. He stated he used two comparables in the development and two sales from a nearby competitive development. He explained in the response letter the adjustments made to each of the four comparable sales used and the final reconciled value opinion.

The Complainant sent in additional information on 3/30/08 which included exterior photos of the sunroom and a rebuttal letter. She stated that she feels that the appraiser valuing the sunroom at \$96.74 per square foot was too high. She stated that to be included with the gross living area that area should be heated and finished in a similar manner as the main dwelling. She stated that the air condition is a \$65 wall air conditioner from Lowes, the ceiling material is vinyl material, and the carpet is inexpensive indoor/outdoor carpeting which has no pad and is glued to the concrete. She stated there are no outlets on the three walls of the addition, just two outlets which were on the exterior of the original part of the condo. She stated that two of the comparable sales were over one year old sales and one is significantly different in age. She also said that the comparable sales used were from a superior condo development which had a pool, clubhouse, and common grounds, which her subject condo did not have. She stated the finish of her condo had very little upgrades and even had some deferred maintenance which was not described in the appraisal report.

## Prior Complaint / Disciplinary History: None

**Recommendation and reasoning:** Mr. Flowers considers that the Respondent has prepared a very good report, and concludes that the Complainant was unhappy with the value. Complainant's main complaint was relative to the air conditioning and whether a 10 by 15 heated sun room should have been included in gross living area. Mr. Flowers concludes the complaint is without merit and that it should be dismissed, given that Respondent's appraisal met USPAP Standards. Staff and counsel concur with Mr. Flowers' recommendation.

**Vote:** Mr. Woodford made a motion to accept the recommendation. Mr. Headden seconded that motion. The motion carried unopposed.

## L08-APP-RBS-2008010371

The instant complaint file was opened against the Respondent for failure to comply with the terms of a consent order which was executed June 11, 2007. The prior complaint file was closed in July of last year. Respondent sent in four courses on November 29, 2007 in reference to the consent order; none of the courses were those outlined in the consent order. Administrative staff sent Respondent correspondence that same day with appropriate courses clearly set forth and additionally included brochures from several schools with the appropriate courses indicated. The Respondent contacted Administrative staff again on January 7, 2008 with a list of courses from the McKissock School. Administrative staff approved the three courses identified in an e-mail to Respondent dated January 9, 2008. The Respondent then phoned fellow legal counsel, Patrick Merkel, and indicated all courses would be completed and submitted to Administrative staff no later than February 15, 2008. However, Respondent did not complete the three specific courses that were approved by the Administrative Director in her January 9, 2008 e-mail to Respondent. On March 17, 2008 the Respondent was sent a letter by current counsel for the Commission, by certified mail, which outlined a 30 day deadline for completion of the terms of the agreement. On April 21, 2008 the Respondent submitted education, but had not taken the required 30 hour course in "Single Family Residential Appraisal" or in lieu thereof "Sales Comparison and Income Approach", but had instead taken the "Residential Report Writing" course twice. The Respondent had also not submitted two required appraisal reports after completing the education requirements of the June, 2007 order. Administrative staff entered the complaint and sent out for a response on April 25, 2008.

The Respondent replied that the failure to comply was his mistake. He stated because he did not closely observe the titles of the courses sent by McKissock, he inadvertently completed an improper course. He stated that he has since located an appropriate course from a different provider. Since March of this year, Respondent has phoned current counsel several times contending that he thought he had complied with the prior order, and that he could not understand why he had not completed the required courses.

The Respondent did send in two appraisal reports with the response to the complaint; however, this does not comply with the terms of the prior consent order because the reports were to be completed after all required courses were satisfied. This Respondent has not received (nor does he contend that he has received) any phone calls or other communications from any member of either the Administrative Staff or Office of Legal Counsel authorizing him to substitute any of the courses which the Administrative Director has found unacceptable. Respondent has still not complied with the requirements of the June, 2007 consent order despite several e-mails and letters.

## Prior Complaint / Disciplinary History:

199902015 Closed with Letter of Warning – Reporting Inconsistencies 200317508 Dismissed 200504395 Closed – Alleged fraudulent activity 200705098 Closed – Consent order – terms were not fulfilled.

**Recommendation and reasoning:** Administrative Staff and counsel would recommend that the Respondent be offered a consent order as follows: Respondent would pay a \$ 1,000 civil penalty upon execution of the order; he would be on probation for 6 months (probationary period beginning 30 days after the effective date of the order) where he must have a certified general

appraiser review and sign all of his appraisal reports; he must send in all of his reports to the Commission's Administrative Office for review during said probationary period; and he must deliver to the Commission's Administrative Office documentary evidence of his compliance with all of the requirements of the June, 2007 consent order by June 30, 2008, or his license will be immediately suspended with no further procedural steps until he complies. Should Respondent reject this consent order, it is recommended that a formal proceeding be initiated.

**Vote:** Mr. Bullington made a motion to accept that recommendation. Mr. Headden seconded that motion. The motion carried unopposed.

## II. RECOMMENDED AMENDMENTS TO RULES

## 1. Amend Rule 1255-1-.12(10) (c) 1 as follows:

- 1. "Direct Supervision" of a registered trainee means that a supervising appraiser shall:
  - (a) disclose in the appraisal report that the supervising appraiser has inspected the subject property both inside and out, and has made an exterior inspection of all comparables relied upon in the appraisal, or disclose that the supervising appraiser did not inspect the subject property both inside and out, and did not inspect the exterior of comparables relied upon in the appraisal;
  - (b) review the registered trainee's appraisal report(s) to ensure the registered trainee's research of general and specific data has been adequately conducted and properly reported, that the registered trainee's application of appraisal principles and methodologies has been properly applied, that any analysis is sound and adequately reported, and that any analysis, opinions, or conclusions of the registered trainee are adequately developed and reported so that the appraisal report is not misleading;
  - (c) review the registered trainee's work product and discuss with the registered trainee any edits, corrections or modifications that need to be made to that work product, and make such edits, corrections or modifications as are required to such work product;
  - (d) accept responsibility for the appraisal report by signing the appraisal report and certifying that the appraisal report has been prepared in compliance with the current edition of the Uniform Standards of Professional Appraisal Practice;
  - (e) make a clear and prominent disclosure that the registered trainee has provided real property appraisal assistance in each appraisal report in accordance with Uniform Standards of Professional Appraisal Practice Standards Rule 2-2 and Standards Rule 2-3;
  - (f) prohibit the registered trainee from signing any appraisal report or other document involved in the appraisal which states or implies that said trainee is "licensed" or "certified" in any manner, and otherwise prohibit the registered trainee from engaging in any activity which is limited to licensed or certified appraisers, or which is designed to give third parties the impression that the registered trainee is a licensed or certified appraiser;
  - (g) ensure that the registered trainee gains sufficient knowledge, skills and abilities that will enable such trainee to accomplish all of the following:

- (A)Define the appraisal problem, which requires the trainee to:
  - (i) identify and locate the real estate;
  - (ii) identify the property rights to be valued;
  - (iii) identify the use of the appraisal
  - (iv) define value(s) to be estimated;
  - (v) establish date(s) of value estimate(s);
  - (vi) identify and describe the scope of the appraisal; and
  - (vii) identify and describe limiting conditions or limitations.
- (B) Conduct preliminary analysis, select and collect applicable data, which requires the trainee to:
  - (i) identify general data (regional, city and neighborhood) social, economic, governmental and environmental factors;
  - (ii) identify specific data (subject and comparables) site and improvement, cost and depreciation, income/expense and capitalization rate, history of ownership and use of property; and (iii) identify competitive supply and demand (the subject market) inventory of competitive properties, sales and listings, vacancies and offerings, absorption rates, demand studies.
- (C) Conduct an analysis of the subject property, which requires a trainee to analyze:
  - (i) site/improvements;
  - (ii) size;
  - (iii) costs:
  - (iv) elements of comparison; and
  - (v) units of comparison.
- (D) Conduct a highest and best use analysis (specified in terms of use, time and market participants), which requires a trainee to analyze:
  - (i) land as if vacant and available; and
  - (ii) property as improved (existing or proposed).
- (E) Estimate land value, including on-site improvements.
- (F) Estimate value of the property using each of the three approaches to value cost, sales comparison and income capitalization.
- (G) Reconcile each value indication and reconcile the final value estimate.
- (H) Report estimate(s) of value(s) as defined.
- 2. Promulgate new rule 1255-1-.15 relative to notices of changes of address and service of process as follows:
  - (1) Each state licensed or certified real estate appraiser shall notify the Commission in writing of the address of such appraiser's principal place of business, such appraiser's current residential address, and all such other mailing addresses and addresses at which the appraiser is currently engaging in the business of preparing real property appraisal reports. Whenever a state licensed or certified appraiser changes a principal place of business, residence, mailing address, or other address at which the appraiser is engaged in the practice of real property appraisal, such appraiser shall, within thirty (30) days after such change, notify the Commission of such change in writing.

- (2) Service upon a state licensed or certified real estate appraiser, or upon a registered trainee of the notice of charges and of hearing in any formal disciplinary proceeding commenced pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301, et seq., shall be made by personal service, or by registered or certified mail at any of the last-known addresses (principal place of business, residence, mailing address, or other business address where such individual engages in the business of real property appraising), which are listed in the Commission's official records as provided in writing by the licensed or certified appraiser or registered trainee.
- (3) Registered or certified letters and other documents from the Commission to a licensed or certified appraiser or to a registered trainee that are properly addressed to any of such individual's last-known addresses (principal place of business, residence, mailing address, or other business address where such individual engages in the business of real estate appraising) as appearing in the Commission's official records, and which are returned by the US Postal Service marked unclaimed or marked with any other similar notation, is evidence of the individual's refusal to accept delivery and evidence of such individual's refusal
- 3. Amend Rule 1255-1-.12(8) to require registered trainees to also provide any other current mailing addresses in addition to their business and residential addresses, to ensure consistency with the proposal to amend 1255-1-.15(1) above.

<b>Vote:</b> Mr. Headden made a motion to accept the recommendation. Mr. Woodford motion. The motion carried unopposed.	seconded that
Being no further business, the meeting was adjourned at 10:15 a.m.	
Nikole Avers, Administrative Director	

William R. Flowers, Jr., Chairman